

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

MICHELLE FERRELL

VS.

SAM'S CLUB

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§

CIVIL ACTION NO.

JURY

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant Sam's Club (incorrectly sued, correctly named "Sam's East, Inc.") files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1332.

I. INTRODUCTION

1. Pursuant to 28 U.S.C. § 1441, *et seq.*, this civil action is removed from the County Court at Law No. 2 of Tarrant County, Texas, where this matter was pending under Cause No. 2021-000799-2 in a matter styled *Michelle Ferrell vs. Sam's Club* (the "State Court Action").

II. NATURE OF THE SUIT

2. This is a premises liability lawsuit alleging claims of personal injury resulting from Defendant's actions or inactions. *Plaintiff's Original Petition pp. 2-4.*

3. Plaintiff Michelle Ferrell alleges that she suffered injuries when she allegedly slipped and fell on a slippery substance on the floor of Defendant's premises. *Id. at p. 2.*

4. Plaintiff brought this lawsuit against Sam's in the County Court at Law No. 2 of Tarrant County, Texas. *See Plaintiff's Original Petition p. 1.*

III. TIMELINESS OF REMOVAL

5. Plaintiff commenced this lawsuit by filing her Original Petition on February 3, 2021. Defendant Sam's Club accepted service on February 11, 2021 through its agent, CT Corporation. Thus, removal is timely.

IV. BASIS FOR REMOVAL JURISDICTION

6. Removal is proper under 28 U.S.C. §§ 1441 and 1332 because there is complete diversity of citizenship between Plaintiff and Defendant, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Plaintiff is now and was at the time of the filing of this action a legal Texas resident residing and domiciled in Tarrant County, Texas. *Plaintiff's Original Petition p. 1*. Accordingly, for diversity purposes, Plaintiff is a citizen of Texas.

8. Plaintiff sued and served Sam's Club. The operating entity for Sam's Club is Sam's East, Inc. Sam's East, Inc. is now and was at the time of the filing of this action an Arkansas corporation. It is an indirectly wholly-owned subsidiary of Walmart Inc. Sam's West, Inc., also an Arkansas corporation, is the sole shareholder of Sam's East, Inc. The principal place of business of Sam's East, Inc. and Sam's West, Inc. is Bentonville, Arkansas 72716. Accordingly, for diversity purposes, Sam's is a citizen of Arkansas.

9. There is and has been at all times relevant to this Notice of Removal, complete diversity of citizenship between Plaintiff and Defendant.

10. Upon information and belief, the amount in controversy exceeds the jurisdictional requirement of \$75,000, exclusive of interest and costs. Plaintiff alleges she suffered severe bodily injuries. *See Plaintiff's Original Petition p. 4*. Plaintiff seeks damages for physical pain past and future, mental anguish past and future, disfigurement past and future, physical impairment past and future, medical expenses past and future, loss of earning capacity past and future, loss of

consortium past and future, loss of household services past and future, lost profits, which is the value for the loss of anticipated profits, and mental anguish damages for egregious conduct. *Id. at pp. 4-5*. Plaintiff's Original Petition alleges damages in the amount of \$250,000 or less. *Id. at p. 1*. The sum claimed by Plaintiff should control the evaluation of amount in controversy.

11. In an effort to confirm the amount in controversy, Wal-Mart sent correspondence to Plaintiff's counsel on February 25, 2021 requesting Plaintiff stipulate she is seeking damages less than \$75,000 in damages, exclusive of interest and costs. Plaintiff's counsel responded that he is unable to agree to the stipulation; thus, there is a presumption that the amount in controversy in this case exceeds \$75,000 exclusive of interest and costs. *Heitman v. State Farm Mut. Auto. Ins. Co.*, No. 5:02-CV-0433-D, 2002 U.S. Dist. LEXIS 6192 (N.D. Tex. April. 9, 2002).

V. THIS NOTICE IS PROCEDURALLY CORRECT

12. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b), because Defendant is not a citizen of Texas, the state in which the action was brought. This action is removable to this Court and venue is proper because this United States District Court and Division embraces the place where the State Court Action was pending. 28 U.S.C. §§ 124(a)(1), 1441(a).

13. Sam's has attached to this Notice of Removal the documents required by 28 U.S.C. § 1446(a) and Local Rule 81.1 as follows:

- A: Index of all documents filed in the State Court Action.
- B: Docket Sheet in the State Court Action.
- C: Copies of all process, pleadings and orders filed in State Court.
- D: Signed Certificate of Interested Persons.

14. Sam's is filing with the Notice of Removal a completed Civil Cover Sheet, a Supplemental Civil Cover Sheet, and separate Certificate of Interested Persons.

15. Sam's retains the right to supplement the jurisdictional allegations by affidavit, declaration, or otherwise should Plaintiff challenge the allegations in a motion to remand or other filing.

16. In accordance with 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to all parties and to the Clerk of the County Court at Law No. 2 of Tarrant County, Texas.

17. Plaintiff has not demanded a jury trial in the State Court Action. Defendant has demanded a jury trial in the State Action.

18. Trial has not commenced in the County Court at Law No. 2 of Tarrant County, Texas.

V. CONCLUSION

19. Since diversity jurisdiction exists over Plaintiff's claim as set forth in Plaintiff's Original Petition, Defendant desires and is entitled to remove the lawsuit filed in the County Court at Law No. 2 of Tarrant County, Texas to the United States District Court for the Northern District of Texas, Fort Worth Division.

WHEREFORE, PREMISES CONSIDERED, Defendant Sam's Club, pursuant to and in conformance with the statutory requirements, removes this action from the County Court at Law No. 2 of Tarrant County, Texas, to this Court.

Respectfully submitted,

By: /s/ Bevan Rhine
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify a true and correct copy of this document has been forwarded to the following counsel for Plaintiff either by e-service, telefax, electronic mail, and/or regular U.S. mail on this 12th day of March, 2021:

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